



## 24 CFR Parts 28, 30, 87, 180, and 3282

[Docket No. FR-6375-F-01]

### Adjustment of Civil Monetary Penalty Amounts for 2023

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule provides for 2023 inflation adjustments of civil monetary penalty amounts required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). This rule also revises HUD's policy and applies annually adjusted penalty amounts to the date the penalty is assessed after the effective date of the rule (if the violation occurred after the enactment of the 2015 Act).

**DATES:** This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20024; telephone number 202-402-5138 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Public Law 114-74, Sec. 701), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410), requires agencies to make annual

adjustments to civil monetary penalty (CMP) amounts for inflation “notwithstanding section 553 of title 5, United States Code.” Section 553 refers to the Administrative Procedure Act, which provides for advance notice and public comment during the rulemaking process. However, as explained in Section III below, HUD has determined that advance notice and public comment on this final rule is unnecessary.

This annual adjustment is for 2023. The annual adjustment is based on the percent change between the U.S. Department of Labor’s Consumer Price Index for All Urban Consumers (“CPI-U”) for the month of October preceding the date of the adjustment, and the CPI-U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2023 is 1.07745.<sup>1</sup> Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.<sup>2</sup>

## **II. This Final Rule**

### **A. Required 2023 Inflation Adjustments**

This final rule makes the required 2023 inflation adjustment of HUD’s civil money penalty amounts. The 2023 increases apply to penalties assessed on or after this rule’s effective date. HUD provides a table showing how, for each component, the penalties are being adjusted for 2023 pursuant to the 2015 Act. In the first column (“Description”), HUD provides a description of the penalty. In the second column (“Statutory Citation”), HUD provides the United States Code statutory citation providing for the penalty. In the third column (“Regulatory Citation”), HUD provides the Code of Federal Regulations citation under Title 24 for the penalty. In the fourth column (“Previous Amount”), HUD provides the amount of the penalty pursuant to the rule implementing the 2022 adjustment (87 FR 24418, April 26, 2022). In the

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<sup>1</sup> Office of Management and Budget, M-23-05-, Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>. (October 2022 CPI-U (298.012) / October 2021 CPI-U (276.589) = 1.07745.)

<sup>2</sup> 28 U.S.C. 2461 note.

fifth column (“2023 Adjusted Amount”), HUD lists the penalty after applying the 2023 inflation adjustment.

Description	Statutory Citation	Regulatory Citation (24 CFR)	Previous Amount	2023 Adjusted Amount
False Claims	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1))	§ 28.10(a)	\$12,537	\$13,508
False Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802 (a)(2))	§ 28.10(b)	\$12,537	\$13,508
Advance Disclosure of Funding	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c))	§ 30.20	\$22,021	\$23,727
Disclosure of Subsidy Layering	Department of Housing and Urban Development Act (42 U.S.C. 3545(f))	§ 30.25	\$22,021	\$23,727
FHA Mortgagees and Lenders Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2))	§ 30.35	Per Violation: \$11,011 Per Year: \$2,202,123	Per Violation: \$11,864 Per Year: \$2,372,677
Other FHA Participants Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2))	§ 30.36	Per Violation: \$11,011 Per Year: \$2,202,123	Per Violation: \$11,864 Per Year: \$2,372,677
Indian Home Loan Guarantee Lender or Holder Violations	Housing Community Development Act of 1992 (12 U.S.C. 1715z-13a(g)(2))	§ 30.40	Per Violation: \$11,011 Per Year: \$2,202,123	Per Violation: \$11,864 Per Year: \$2,372,677
Multifamily & Section 202 or 811 Owners Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-15(c)(2))	§ 30.45	\$55,052	\$59,316
Ginnie Mae Issuers & Custodians Violations	HUD Reform Act of 1989 (12 U.S.C. 1723i(a))	§ 30.50	Per Violation: \$11,011 Per Year: \$2,202,123	Per Violation: \$11,864 Per Year: \$2,372,677
Title I Broker & Dealers Violations	HUD Reform Act of 1989 (12 U.S.C. 1703)	§ 30.60	Per Violation: \$11,011 Per Year: \$2,202,123	Per Violation: \$11,864 Per Year: \$2,372,677

Lead Disclosure Violation	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1))	§ 30.65	\$19,507	\$21,018
Section 8 Owners Violations	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z-1(b)(2))	§ 30.68	\$42,788	\$46,102
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352)	§ 87.400	Min: \$22,021 Max: \$220,213	Min: \$23,727 Max: \$237,268
Fair Housing Act Civil Penalties	Fair Housing Act (42 U.S.C. 3612(g)(3))	§180.671(a)	No Priors: \$23,011 One Prior: \$57,527 Two or More Priors: \$115,054	No Priors: \$24,793 One Prior: \$61,982 Two or More Priors: \$123,965
Manufactured Housing Regulations Violation	Housing Community Development Act of 1974 (42 U.S.C. 5410)	§ 3282.10	Per Violation: \$3,198 Per Year: \$3,997,550	Per Violation: \$3,446 Per Year: \$4,307,160

## **B. HUD’s Policy Change: Applying Adjusted Penalties to Violations Assessed After the Effective Date of the Rule**

This final rule also revises HUD’s policy to apply annually adjusted penalties to violations assessed after the effective date of each annual adjustment (if the violation occurred after the enactment of the 2015 Act). Since the enactment of the 2015 Act, HUD has not applied the adjustments retroactively and provided that the inflation-adjusted penalty amounts applied to violations occurring on or after the rule's effective date. On September 21, 2022, HUD published a notice entitled, “Adjustment of Civil Monetary Penalty Amounts: Request for Comments” (87 FR 57655) which announced that HUD was considering revising its policy regarding how it implements the annual inflation-adjusted civil money penalties. Specifically, HUD stated that it was considering applying the adjusted penalties to the date that the penalty was assessed rather than to the date the violation occurred. HUD explained its consideration to revise the regulation came after revisiting Section 6 of the 2015 Act, the Office of Management and Budget guidance (M-22-07), and a review of the penalty adjustments published by other Federal agencies. Through this notice of request for information, HUD sought public input on the impact of

applying increased penalty amounts on the date the penalty is assessed rather than the date of the violation.

In response to HUD's request for comment, HUD received one comment signed by 25 fair housing organizations. The comment supported HUD's proposal to apply increased penalty amounts to the date the penalty is assessed. The comment stated that the policy change would bring HUD in line with other Federal agencies which tie penalties to the date of assessment rather than the date of violation. The comment asserted that revising HUD's policy regarding when it imposes adjusted penalty amounts would help deter violations of the Fair Housing Act. Additionally, the organizations pointed out that a lengthy period of time may pass between when a violation occurs and when damages and civil penalties are awarded. The comment explained that the time between these events could be substantial since after a violation it may take time for a complaint to be filed, and then an investigation is conducted, a determination is issued, and a hearing is scheduled and held before civil penalties are awarded. The organizations also stated that when penalties are assessed as of the date of the violation, it defeats Congressional purpose: there is less of a deterrent effect because the amount is "outdated" and does not keep up with the cost of living.

The comment letter also stated that assessing appropriate civil penalties in fair housing cases should not be underestimated, as it emphasizes the importance of complying with fair housing laws. Lastly, "to deter egregious behavior, to respond to the nature of the violation, and to protect the public interest in assuring that discriminatory conduct is not repeated," the fair housing organizations believe it is important for HUD to institute a process that will permit the maximum inflation adjustments of civil penalty amounts when the penalty is determined justified and assessed.

In considering the public comment and HUD's consideration and experience in implementing inflation-adjusted penalty amounts, HUD is announcing that it will apply the inflation-adjusted penalty amounts on the date the penalty is assessed rather than the date the

violation occurred. HUD is making this change after revisiting Section 6 of the 2015 Act which provides that an “increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.” (28 U.S.C. 2461 note.) OMB guidance (M-22-07 and M-23-05), which provides the annual inflation multiplier also provides that the adjusted penalty applies to “penalties assessed after the effective date of the applicable adjustment.” Lastly, a review of the penalty adjustments published by other Federal agencies suggests that they apply the inflation-adjusted penalty amounts to penalties assessed after the date of the increase as long as the violation occurred after the enactment of the 2015 Act.

### **III. Justification for Final Rulemaking for the 2023 Adjustments**

HUD generally publishes regulations for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is “impractical, unnecessary, or contrary to the public interest” (see 24 CFR 10.1). As discussed, this final rule makes the required 2023 inflation adjustment, which HUD does not have discretion to change, and a change to HUD’s policy to apply increased penalty amounts to the date the violation is assessed, which HUD issued a request for public comment for on September 21, 2022. Moreover, the 2015 Act specifies that a delay in the effective date under the Administrative Procedure Act is not required for annual adjustments under the 2015 Act. HUD has determined, therefore, that it is unnecessary to delay the effectiveness of the 2023 inflation adjustments to solicit public comments.

Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that any HUD regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of

not less than 60 days. This rule does not authorize the imposition of a civil money penalty—rather, it makes a standard inflation adjustment to penalties that were previously authorized. As noted above, the 2023 inflation adjustments are made in accordance with a statutorily prescribed formula that does not provide for agency discretion.

Accordingly, a delay in the effectiveness of the 2023 inflation adjustments in order to provide the public with an opportunity to comment is unnecessary because the 2015 Act exempts the adjustments from the need for delay, the rule does not authorize the imposition of a civil money penalty or alter the requirements in any way, and, in any event, HUD would not have the discretion to make changes as a result of any comments. Additionally, regarding revising HUD’s policy regarding determining implementing the inflation-adjusted penalties, HUD published a request for public comment on applying annually adjusted penalty amounts to violations assessed after the effective date of the rule (if the violation occurred after the enactment of the 2015 Act).

#### **IV. Findings and Certifications**

##### Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review) (58 FR 51735), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) (76 FR 3821) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. As discussed above in this preamble, this final rule adjusts existing civil monetary penalties for inflation by a statutorily required amount.

HUD determined that this rule was not significant under Executive Order 12866 and Executive Order 13563.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

#### Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)<sup>3</sup> requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.<sup>4</sup> However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) (64 FR 43255) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule

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<sup>3</sup> 2 U.S.C. 1532.

<sup>4</sup> 2 U.S.C. 1535.



preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

#### Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### **List of Subjects**

##### 24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

##### 24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgage insurance, Penalties.

##### 24 CFR Part 87

Government contracts, Government employees, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

##### 24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

##### 24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, 87, 180, and 3282 as follows:

**PART 28 – IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986**

1. The authority citation for part 28 continues to read as follows:

**AUTHORITY:** 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812; 42 U.S.C. 3535(d).

2. In § 28.10, revise paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

**§ 28.10 Basis for civil penalties and assessments.**

(a) \* \* \*

(1) A civil penalty of not more than \$13,508 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

\* \* \* \* \*

(b) \* \* \*

(1) A civil penalty of not more than \$13,508 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

\* \* \* \* \*

**PART 30 – CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT**

3. The authority citation for part 30 continues to read as follows:

**AUTHORITY:** 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, and 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

4. In § 30.20, revise paragraph (b) to read as follows:

**§ 30.20 Ethical violations by HUD employees.**

\* \* \* \* \*

(b) *Maximum penalty.* The maximum penalty is \$23,727 for each violation.

5. In § 30.25, revise paragraph (b) to read as follows:

**§ 30.25 Violations by applicants for assistance.**

\* \* \* \* \*

(b) *Maximum penalty.* The maximum penalty is \$23,727 for each violation.

6. In § 30.35, revise the first sentence in paragraph (c)(1) to read as follows:

**§ 30.35 Mortgagees and lenders.**

\* \* \* \* \*

(c)(1) \* \* \* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 for all violations committed during any one-year period. \* \* \*

\* \* \* \* \*

7. In § 30.36, revise the first sentence in paragraph (c) to read as follows:

**§ 30.36 Other participants in FHA programs.**

\* \* \* \* \*

(c) \* \* \* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 for all violations committed during any one-year period. \* \* \*

8. In § 30.40, revise the first sentence in paragraph (c) to read as follows:

**§ 30.40 Loan guarantees for Indian housing.**

\* \* \* \* \*

(c) \* \* \* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 for all violations committed during any one-year period. \* \* \*

9. In § 30.45, revise paragraph (g) to read as follows:

**§ 30.45 Multifamily and section 202 or 811 mortgagors.**

\* \* \* \* \*

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is \$59,316.

\* \* \* \* \*

10. In § 30.50, revise the first sentence in paragraph (c) to read as follows:

**§ 30.50 GNMA issuers and custodians.**

\* \* \* \* \*

(c) \* \* \* The maximum penalty is \$11,864 for each violation, up to a limit of \$2,372,677 during any one-year period. \* \* \*

11. In § 30.60, revise paragraph (c) to read as follows:

**§ 30.60 Dealers or sponsored third-party originators.**

\* \* \* \* \*

(c) *Amount of penalty.* The maximum penalty is \$11,864 for each violation, up to a limit for any particular person of \$2,372,677 during any one-year period.

12. In § 30.65, revise paragraph (b) to read as follows:

**§ 30.65 Failure to disclose lead-based paint hazards.**

\* \* \* \* \*

(b) *Amount of penalty.* The maximum penalty is \$21,018 for each violation.

13. In § 30.68, revise paragraph (c) to read as follows:

**§ 30.68 Section 8 owners.**

\* \* \* \* \*

(c) *Maximum penalty.* The maximum penalty for each violation under this section is \$46,102.

\* \* \* \* \*

**PART 87 – NEW RESTRICTIONS ON LOBBYING**

14. The authority citation for part 87 continues to read as follows:

**AUTHORITY:** 28 U.S.C. 1 note; 31 U.S.C. 1352; 42 U.S.C. 3535(d).

**15.** In § 87.400, revise paragraphs (a), (b), and (e) to read as follows:

**§ 87.400 Penalties.**

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$23,727 and not more than \$237,268 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$23,727 and not more than \$237,268 for each such failure.

\* \* \* \* \*

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of \$23,727, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$23,727 and \$237,268 as determined by the agency head or his or her designee.

\* \* \* \* \*

**PART 180 – CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS**

**16.** The authority citation for part 180 continues to read as follows:

**AUTHORITY:** 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

**17.** In § 180.671, revise paragraphs (a)(1) through (3) to read as follows:

**§ 180.671 Assessing civil penalties for Fair Housing Act cases.**

(a) \* \* \*

(1) \$24,793, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) \$61,982, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) \$123,965, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

\* \* \* \* \*

## **PART 3282 – MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS**

**18.** The authority citation for part 3282 continues to read as follows:

**AUTHORITY:** 15 U.S.C. 2967; 42 U.S.C. 3535(d), 5403, and 5424.

**19.** Revise § 3282.10 to read as follows:

### **§ 3282.10 Civil and criminal penalties.**

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be \$3,446 for each violation, up to a maximum of \$4,307,160 for any related series of violations occurring within one year from the date of the first violation.

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Damon Smith,  
General Counsel

